U.S. SUPREME COURT RECORDS & BRIEFS · No. 73-1279 · 420 U.S. 376 (1975)

Williams & Wilkins Co. v. United States

A reader's guide to the Supreme Court record and briefs — the case that deadlocked 4–4 and left library photocopying standing as fair use

A guide to the documents in this item · prepared from the full text of the 28 filings collected here

This microfiche item collects the complete Supreme Court file in *Williams & Wilkins Co. v. United States*—the first case in which a court squarely decided whether a library's photocopying of copyrighted journal articles is copyright infringement or "fair use." The petitioner, a Baltimore medical publisher, sought to overturn a 4–3 ruling of the U.S. Court of Claims (*487 F.2d 1345*, Nov. 27, 1973) that photocopying by the National Institutes of Health library and the National Library of Medicine (NLM) was fair use. On February 25, 1975, an equally divided Supreme Court—Justice Blackmun not participating—affirmed without opinion, leaving the libraries' victory in place but setting no nationwide precedent. The unresolved question passed to Congress, which answered it in §108 of the Copyright Act of 1976 and, through the CONTU commission, in the "rule of five" and the Copyright Clearance Center.

What is in this item

The fiche is organized as 28 separately paginated documents spanning both stages of the case—the petition for certiorari and the merits. In order: the Appendix (record excerpts); the Petition for Writ of Certiorari; eight cert-stage amicus briefs; the United States' brief in opposition and the petitioner's cert reply; then the merits round—the Petitioner's Brief, thirteen more amicus briefs, the Brief for the United States, and the petitioner's merits reply; closing with the one-sentence Per Curiam. The amici divide cleanly: publisher and author organizations urging reversal, and library, university, medical, and education organizations urging affirmance.

The dispute in brief

All sides agreed that the photocopying machine had transformed how research libraries operate; they disagreed about who should respond to it and how. NIH and NLM supplied single photocopies of journal articles to researchers on request—hundreds of thousands of copies and millions of pages a year—subject to self-imposed limits (one copy per request, a roughly 40–50 page ceiling, a list of journals they would not copy).

REVERSE The publisher's position

A photocopier is a printing press; supplying a "single copy" on demand, multiplied across

AFFIRM The government & libraries' position

Single-copy photocopying for a researcher is how scholarship has always worked and merely helps

thousands of requests, is a systematic reprinting operation that substitutes for subscriptions and reprints. Copying an *entire* article can never be fair use. Because the governing statute (28 U.S.C. §1498(b)) allows only compensation and no injunction, a ruling for the publisher would not cut off access—it would simply require the government to pay a reasonable royalty, as it already pays Xerox for the hardware.

the reader do what the reader may already do. It caused no proven economic harm—the publisher's subscriptions and revenues actually rose. Libraries function like the reader, not the publisher (the CATV analogy from *Fortnightly*). And any new compensation scheme is a policy question "preeminently for Congress," not the courts.

Map of the documents

#	Document	Filed by / counsel	Side
01	Appendix	Record excerpts (both parties)	—
02	Petition for Writ of Certiorari	Williams & Wilkins — Alan Latman (Cowan, Liebowitz & Latman)	Reverse
03	Amicus (cert)	Authors League of America — Irwin Karp	Reverse
04	Amicus (cert)	ASTM & Nat'l Council of Teachers of Mathematics — R. B. Washburn	Reverse
05	Amicus (cert)	Assn. of American Publishers & Assn. of American University Presses — Charles H. Lieb	Reverse
06	Amicus (cert)	American Chemical Society — Arthur B. Hanson	Reverse
07	Amicus (cert)	Amer. Guild of Authors & Composers; Harcourt; Macmillan; et al. — Joseph Calderon	Reverse
08	Amicus (cert)	Society for Industrial & Applied Mathematics — L. I. Boonin *(neutral on merits)*	Cert only
09	Amicus (cert)	Magazine Publishers Association — Alfred H. Wasserstrom	Reverse
10	Amicus (cert)	Information Industry Association — Paul G. Zurkowski	Reverse
11	Brief for the United States in Opposition	Sol. Gen. Robert H. Bork	Affirm
12	Reply Brief (cert)	Williams & Wilkins — Alan Latman	Reverse
13	Amicus (merits)	American Chemical Society — Arthur B. Hanson	Reverse
14	Amicus (merits)	AAP, Assn. of Am. University Presses & Educ. Media Producers — Charles H. Lieb	Reverse
15	Amicus (merits)	Authors League of America — Irwin Karp	Reverse
16	Amicus (merits)	ASTM, NCTM, Amer. Society for Microbiology & J. Urology ed. — R. B. Washburn	Reverse
17	Amicus (merits)	Magazine Publishers Association — Alfred H. Wasserstrom	Reverse
18	Petitioner's Brief (merits)	Williams & Wilkins — Alan Latman	Reverse
19	Amicus (merits)	Information Industry Association — Paul G. Zurkowski	Reverse

#	Document	Filed by / counsel	Side
20	Amicus (merits)	Amer. Guild of Authors & Composers; Harcourt; Macmillan; et al. — Joseph Calderon	Reverse
21	Amicus (merits)	Associated Councils of the Arts / Advocates for the Arts — Howard M. Squadron	Reverse
22	Amicus (merits)	National Education Association — Harry N. Rosenfield	Affirm
23	Amicus (merits)	American Library Association — North, Engel & Amend (Kirkland & Ellis)	Affirm
24	Amicus (merits)	Special Libraries Association — North, Engel & Amend (Kirkland & Ellis)	Affirm
25	Amicus (merits)	Assn. of Research Libraries, Med. Library Assn, AMA, ADA, MLA, et al. — Cox, Langford & Brown	Affirm
26	Brief for the United States (merits)	Sol. Gen. Robert H. Bork	Affirm
27	Reply Brief (merits)	Williams & Wilkins — Alan Latman	Reverse
28	Per Curiam	The Supreme Court	Affirmed 4–4

The case below: the Court of Claims record

Because this was a copyright suit *against the United States*, it never passed through a federal district court: under 28 U.S.C. §1498(b) such claims go directly to the **U.S. Court of Claims**. The case was tried before a single **trial commissioner, James F. Davis**, who on **February 16, 1972** recommended judgment *for the publisher* — finding the NIH and NLM photocopying to be infringement, not fair use. The full Court of Claims then **reversed him 4–3** on **November 27, 1973** (*Williams & Wilkins Co. v. United States*, 487 F.2d 1345), holding the copying to be fair use — the judgment the Supreme Court would go on to affirm by an equally divided vote. So the pro-publisher position first *won* before the trial commissioner, then lost by a single vote at the Court of Claims, and finally fell short by the narrowest possible margin at the Supreme Court.

The 4–3 Court of Claims split, like the Supreme Court's, did not track party: the majority for fair use (Judge Oscar H. Davis, who wrote the opinion, with Skelton, Kashiwa, and Bennett) and the dissent (Chief Judge Wilson Cowen, joined by Kunzig, and Judge Nichols separately) each mixed Democratic and Republican appointees. (Note the two Davises: *Trial Commissioner* James F. Davis recommended for the publisher; the unrelated *Judge* Oscar H. Davis wrote the en-banc majority the other way.)

These lower-court documents predate PACER by two decades, so they are not in the RECAP docket archive — but the Internet Archive holds them as digitized reports (via ERIC), and this microfiche briefs item reproduces them as well:

Document	What it is	Date	IA item
Trial Commissioner's Report	James F. Davis's recommended opinion — found the copying *infringing* (for the publisher)	Feb. 16, 1972	`ERIC_ED058921` (64 pp)
Court of Claims decision	*Williams & Wilkins Co. v. United States*, 487 F.2d 1345 — reversed the commissioner 4–3, held fair use (Davis, J.; Cowen, C.J. & Nichols, J., dissenting)	Nov. 27, 1973	`ERIC_ED082802` (105 pp)
Record & opinions (this item)	The Appendix, plus the Court of Claims majority and dissents reproduced inside the cert petition — Cowen's dissent incorporates the trial commissioner's full opinion	—	`micro_IA40385001_1623`

The petitioner: Williams & Wilkins

Cowan, Liebowitz & Latman, P.C. — **Alan Latman** (attorney of record), with Arthur J. Greenbaum, Martin F. Richman, and Carol Faye Simkin. Documents 02 (petition), 18 (merits brief), 12 & 27 (replies).

Question presented: *"Does systematic reproduction of copyrighted journal articles in their entirety by U.S. Government libraries constitute 'fair use' or copyright infringement compensable under 28 U.S.C. §1498(b)?"*

- **This is a reprint operation, not fair use.** Fair use historically lets an author weave *portions* of earlier work into a *new* work; here "there is no creativity, and the whole work is taken, over and over again"—what Chief Judge Cowen below called a "reprint service." Each article is a separate work under §3, so copying an entire article is copying an entire work, which the Ninth (*Benny v. Loew's*), D.C. (*Rickover*), and Eighth (*Wihtol v. Crow*) Circuits hold can never be fair use.
- **A photocopier is a printing press.** Rejects the majority's "solid doubt" that photocopying is "copying" or "printing" under §1(a): "To apply plain meaning to ordinary words such as 'copy' or 'print' is not to read them with blinders… it is to read them with common sense."
- **The remedy is money, not an injunction.** §1498(b) is an eminent-domain / compulsory-license provision—no injunction is possible—so "access" is never at risk; the publisher seeks only "reasonable and entire compensation." The suit exists "to broaden the financial support available to privately published, limited circulation, scientific journals whose survival is vital."
- **The "holding operation" is an abdication.** The court below hoped its ruling would be "but a 'holding operation'" until Congress acted—"virtually an abdication of the judicial function." The self-limits are "illusory": "The limitations do not limit." And the technological gulf is decisive: "To equate pre-Xerox copying with the post-Xerox copying era is to classify both the slingshot and the atomic bomb as weapons."

The respondent: the United States

Solicitor General **Robert H. Bork**, with Assistant Attorney General Carla A. Hills, Harriet S. Shapiro, and William Kanter, Michael Stein & Thomas Byrnes. Documents 11 (cert opposition), 26 (merits).

- **Wins on fair use—deliberately narrowly.** The Solicitor General rests on fair use rather than the broader theory that copyright never reached single copies, calling the library amici's scope argument "persuasive" but declining to adopt it, keeping the holding tied to "the type and context of use by NIH and NLM."
- **No economic harm—subscriptions rose.** *Medicine* climbed 2,864 → 5,444 and *Gastroenterology* 4,132 → 7,006 over the decade; the publisher's net sales grew about 14% a year. A photocopy "substitutes instead for a library loan," not a subscription—and the publisher does not even stock back-issue reprints.
- **The CATV analogy.** Under *Fortnightly* and *Teleprompter*, copyright does not reach a new medium of dissemination where the parties' functions differ; libraries "facilitate the reader's ability to use" the

journals—a reading function—and the case is stronger than CATV because the libraries are non-profit.

- **The authors sided with the libraries,** and licensing/technology policy "is preeminently a problem for Congress." The brief preserves a fallback: the *authors*, not the publisher, may actually own the copyrights.

Amici urging reversal — the publishers and authors

Publisher and author organizations, marshaled by two of the era's leading copyright lawyers—Irwin Karp for the Authors League and Charles H. Lieb for the book publishers.

Authors League of America REVERSE

Irwin Karp. Documents 03 (cert) & 15 (merits).

- "'Single copy' is a euphemism"—one hundred requests produce one hundred "single copies," and 1 U.S.C. §1 reads the singular to include the plural.
- Journals "are neither immortal nor immune from the laws of economics" (invoking the deaths of *LIFE*, *LOOK*, and the *Saturday Evening Post*); systematic reproduction is "a separate medium for distributing them," like a paperback reprint, for which compensation is independently owed.
- The real solution is *voluntary* licensing on the ASCAP/BMI model; because §1498(b) bars an injunction, government libraries would keep copying and thus be *forced* to negotiate—whereas the decision below "offers no hope of a reasonable solution."

Assn. of American Publishers, Assn. of American University Presses & Educ. Media Producers REVERSE

Charles H. Lieb (Paskus, Gordon & Hyman). Documents 05 (cert) & 14 (merits).

- "Fair use, by definition, applies only to copying which does not reduce the potential market for the original." "'Sharing' is a euphemism which in library terms means that by the systematic use of photocopies one published copy of a work can take the place of many."
- Distinguishes true interlibrary loan (occasional, for unusual or costly items) from NLM's practice as a "librarian's library" acting as an "'on-demand' reprinter and publisher," and points to a newly announced Harvard/Yale/Columbia/NYPL consortium planning to cut acquisitions and swap photocopies as a "foreboding harbinger."
- The majority confused liability with damage: "Infringement is not dependent on a showing of damage," and there is "no 'non-profit' exemption."
- Uniquely proposes a **prospective-only** remedy—copying before the Court's decision exempt, copying after it infringing (citing *Chevron Oil v. Huson*).

American Chemical Society REVERSE

Arthur B. Hanson & William J. Butler, Jr. Documents 06 (cert) & 13 (merits).

- Systematic royalty-free copying will cut paid circulation, spreading fixed costs over fewer subscribers and "driving up unit costs to unacceptable levels"—harming dissemination of science, not helping it.
- Detailed economic data: only one of 20 ACS journals exceeds 32,000 circulation and 14 are under 10,000, so losing "a few hundred subscribers… can affect the unit subscription price"; five ACS journals ranked among the 22 most-copied at the New York Public Library.
- The majority "usurp[ed] the legislative authority" of Congress while admitting it acted "essentially as an interim legislative body."

ASTM, NCTM, Amer. Society for Microbiology & the *Journal of Urology* editor REVERSE

Robert B. Washburn (Woodcock, Washburn, Kurtz & Mackiewicz). Documents 04 (cert) & 16 (merits).

- The technical "xerography *is* printing" brief: a step-by-step account of the Xerox 914/2400/7000 and Copyflo machines NIH actually used, arguing they are "plateless printing presses"—"xerography… actually resembles printing in important details."
- Reinforced by patent law, which treats microfilm and xerographic output as a "printed publication," and by the Court's own Rule 39(4) definition of "printing." "Good-by to Gutenberg… every office mailroom [is now] a publishing house."
- Concrete harm: the Amer. Society for Microbiology reports "a drop in our nonmember subscriptions, and this certainly traces to copying."

Magazine Publishers Association REVERSE

Alfred H. Wasserstrom (Lipton, Wasserstrom & Siefken). Documents 09 (cert) & 17 (merits).

- The danger is the *rationale*: the decision "will be read… that a copyright holder has no rights a library is bound to respect" (quoting Judge Nichols's dissent).
- The majority's "solid doubt" that §1 reaches periodical copying is "a gratuitous doubt"; to say "'copy' may not mean 'copy'" makes it "a humpty-dumpty word… border[ing] on pretentious nonsense."
- A diversity-and-censorship warning: if marginal journals die, government publications may fill the vacuum, so "government functionaries, rather than independent copyrightees, will determine what may or may not be published."

Information Industry Association REVERSE

Paul G. Zurkowski. Documents 10 (cert) & 19 (merits).

- Charges NLM with hypocrisy: "For the information it copies, NLM does not wish to pay. For the information it creates, it requires users… to pay"—selling its own citation tapes at $30,000 a year.
- By legitimizing the copying the court made the publisher "subsidize… a competitor" (NLM, which itself markets information)—"patently inequitable."
- If NLM "had obtained a printing press… there would have been no question"—so whether a photocopier "makes a difference" is the central issue; altering the information-distribution system is for Congress.

Amer. Guild of Authors & Composers; Behavioral Publications; Edwin H. Morris; Harcourt Brace Jovanovich; Macmillan REVERSE

Joseph Calderon; of counsel Linden & Deutsch (Bella L. Linden, Jon A. Baumgarten). Documents 07 (cert) & 20 (merits).

- The most authority-dense brief. Reframes the "personal use" defense: library copying is "two separate and distinct transactions," and only the library's copying is at issue—"[t]he reader did not make the copy; the library did"—so the scholar's ultimate use is "entirely irrelevant."
- "There exists no meaningful distinction between the 'copying' of a work by conventional printing and its duplication by photomechanical means… A Xerox machine is a printing device in any practical sense of the word 'print'."
- Marshals extensive 1909-Act legislative history to show the "copy" right was inserted precisely to reach new reproductive processes, and attacks the majority's reasoning as "entirely circular." Notes ~12% of NLM copies went to commercial (drug-company) recipients.

Associated Councils of the Arts / Advocates for the Arts REVERSE

Howard M. Squadron (Squadron, Gartenberg, Ellenoff & Plesent). Document 21 (merits).

- The slippery-slope-to-the-arts brief: if a science article may be copied, "why cannot a short story or a poem… a musical composition… a photograph or a drawing or a lithograph?"
- The majority's disclaimer that its holding is limited to NIH/NLM's kind of use is "wholly without legal basis"—neither the Constitution nor the Copyright Law distinguishes by field of work.
- Foresees a day when "but one copy of a poem or short story or even a novel need be published and be readily made available to all free of charge"; any such change "should be by Congressional action, not by judicial expansion."

Society for Industrial & Applied Mathematics NEUTRAL

Lawrence I. Boonin. Document 08 (cert).

- Explicitly "has not taken… a position on the merits"—it supported *certiorari only*, to obtain guidance.
- Argues fair use "requires review, in light of recent and foreseeable technological developments," because xerography eliminated the old implicit limit on fair use: the physical labor of transcription.

Amici urging affirmance — the libraries, universities & scholars

The library, university, medical, and education establishment. Notably, they split on theory: a scope-of-monopoly attack (ALA/SLA), a statutory-history attack (ARL group), and a constitutional-rights argument (NEA).

American Library Association · Special Libraries Association AFFIRM

Both briefs signed by **William D. North, Ronald L. Engel, James M. Amend** & John R. Linton; of counsel **Kirkland & Ellis**. Documents 23 (ALA) & 24 (SLA, which adopts the ALA brief in full).

- **Scope of the monopoly.** Single-copy library photocopying "does not come within the ambit of the limited monopoly" of the 1909 Act—a question of first impression; Congress deleted a draft clause to protect library practice, and the Library of Congress permitted photocopying before and after 1909.
- **The CATV / functional line.** Under *Fortnightly* and *Teleprompter*, copyright does not reach a new medium absent a "compelling showing" that owner and user perform the same function; libraries fall on the *reader* side of the line, not the publisher side. A merely "quantitative" increase in copying "cannot be the proper test."
- **Fair use as the reader's own privilege.** "Libraries merely do for researchers that which researchers themselves have always been entitled to do"; the amount-copied factor governs competing-work uses, not access uses (grounded in *Baker v. Selden*). "Photocopies do not supplant, they supplement."
- **The burden of a pay regime.** A ruling for the publisher leaves libraries only one "viable decision—to refuse the request": statutory minimum damages alone "would exceed the annual budgets of many large libraries," and administering royalties means "expenditure of dollars by the library to collect pennies." With no compulsory license in the 1909 Act, libraries would be "at the mercy of the copyright proprietors."

Assn. of Research Libraries, Medical Library Assn, Amer. Assn. of Law Libraries, Assn. of American Universities, AMA, ADA, Modern Language Assn, History of Science Society, et al. AFFIRM

Philip B. Brown & Stephen C. Lieberman (Cox, Langford & Brown); of counsel John P. Furman. Document 25 (merits).

- **The statutory-history argument—this brief's distinctive contribution.** Traces §1(a) from the 1790 Act through the 1831, 1870, and 1873 revisions to show the exclusive right for *books* was always "printing, reprinting, publishing, and vending," while "copy" appeared only for prints, engravings, maps, and music—never books. So a library "does not invade any 'exclusive right'… when… it makes a single copy of an article."
- **A photocopy is a research tool, not a substitute:** a bound volume "cannot be put into a filing cabinet… cannot be given conveniently to a typist"; invokes the Sound Recording Act of 1971 (home taping for private use left unrestrained).
- **No economic harm:** subscriptions to the publisher's journals actually rose 1959–1969; "the record simply does not show a serious adverse impact."
- **A standing / ownership defense unique to this brief:** the publisher holds copyright in its own name on only 13 of its 26 journals, and the authors (McKusick, Starr, Banks) testified they never assigned rights, treated their articles as "voluntary contribution[s]," and *favored* the photocopying—so the publisher should not use "its technical status as the 'copyright proprietor'" against the authors' own wishes.

National Education Association AFFIRM

Harry N. Rosenfield; of counsel Stephen M. Nassau. Document 22 (merits).

- The constitutional outlier. Fair use has affirmative footing in the First and Ninth Amendments—"the citizen's right to know" and "the Student's Right to Learn"—while copyright is "a statutory privilege, not a constitutional right" (*Wheaton v. Peters*).
- "A customary use is a fair use," without needing to satisfy the ordinary criteria; library photocopying has been customary "at least 50 years."
- The teaching context needs materials "recent and contemporaneous," used at the "teachable moment"; a permission-first regime would "lose the teachable moment by waiting for months."

The disposition

The entire, closely argued record came down to two sentences, entered February 25, 1975 (Document 28):

> *PER CURIAM. The judgment is affirmed by an equally divided Court. Mr. Justice Blackmun took no part in the decision of this case.*

An equally divided Court affirms without opinion and without setting nationwide precedent. The libraries' fair-use victory in the Court of Claims stood, but no reasoning was blessed—so the question of library and machine copying passed, as nearly every brief on both sides had urged in one way or another, to Congress.

Why the Court deadlocked 4–4

The one-line affirmance hides a closely fought internal contest, reconstructed by two independent scholars from the Justices' own papers—Robert Brauneis (2018) and Jonathan Band & Tara Weinstein (2005), drawing on the Blackmun, White, and Powell collections. What follows is their account.

The reconstructed lineup

AFFIRM **fair use / pro-library:** Chief Justice Burger; Justices Douglas, Brennan, White.

REVERSE **infringement / pro-publisher:** Justices Stewart, Marshall, Powell, Rehnquist.

RECUSED Justice Blackmun took no part. The tally comes from Blackmun's own conference notes—he sat at the December 20, 1974 conference and recorded every other Justice's vote while withholding his own—so the provenance is as strong as it can be.

How the deadlock came about

- **Recusal, from the start.** When the Court granted review (May 17, 1974) Blackmun already stepped aside, because the Mayo Foundation—his former employer—had filed an amicus brief below on the fair-use side. He heard oral argument on December 17, 1974 but abstained from voting.
- **A 4–4 conference (December 20, 1974) that never shifted.** The eight sitting Justices split evenly and stayed that way; there was no later change of position. The deadlock existed from the conference vote onward.
- **White was the only convertible vote.** White's own clerk had written a bench memo urging reversal, but White disregarded it and voted to affirm—while signaling he might be open to a reversal approach that Justice Powell was floating.
- **The Powell memo (circulated December 30, 1974).** To try to convert White and hold his own side, Powell circulated an eight-page memorandum—typeset by the Court printer to read like a draft opinion. Its "damages approach" held that the copying *is* infringement (so, reverse) but with a softened remedy: non-commercial copiers like libraries would generally face only actual, provable damages, no statutory damages or injunction. Its theory of fair use: a use is fair only when it creates "something essentially new."
- **Rehnquist joined (January 3, 1975)** the memo as a proposed Opinion of the Court.
- **White wavered but refused to switch (January 8, 1975).** Powell's memo tempted him—"there is hope that I shall see the light"—but he objected that the remedy required "creative handling" of the 1909 Act's statutory-damages provision. Powell replied the next day conceding his approach was "creative—in the sense that I have no case to support it," but "neither is there any case which precludes it." It did not work; White held at affirm.
- **Judgment (February 25, 1975).** With White holding and Blackmun out, the Court affirmed by an equally divided vote, leaving the fair-use ruling standing but setting no precedent.

Blackmun's recusal decided the case

Both scholars conclude that had Blackmun sat, he most likely would have voted to *reverse*—making it 5–4 against fair use. His recusal is therefore what saved the libraries' victory. His pre-argument memo shows the leaning:

> *"When I was at the Mayo Clinic I was really shocked at what I regard as the medical profession's abuse in requesting reprints at the expense of the author… researchers have abused the privilege…. Somewhere some financial responsibility ought to come into play…. At this moment, my inclination is to side with the dissenters in the court of claims… I am inclined to reverse, but I am not at all frozen into that view."* — *Blackmun, Memorandum to File, Dec. 16, 1974*

Brauneis argues the recusal was itself "dubious": Blackmun's formal Mayo tie had ended in 1959, fifteen years earlier; his clerk's research concluded recusal was not legally required; and—strikingly—Chief Justice Burger had a *more recent* Mayo connection (a Foundation trusteeship, 1959–1969) yet did not recuse and voted to affirm, consistent with Mayo's amicus position. Blackmun noted he did not want his reason publicized "because of C.J.'s posture"—that is, to avoid raising whether Burger should have stepped aside too. The recusal that decided the case thus rested on a connection thinner than one a participating Justice had.

Powell's memo captured the reversal side's core objection to calling wholesale photocopying fair use:

> *"However justifiable and socially beneficial the libraries' photocopying practices may be, they cannot be characterized as a 'fair use'…. The copy adds nothing new and has no economic value independent of the work of the copyright holder."* — *Powell, Memorandum to Conference, Dec. 30, 1974*

Sources for the deadlock account

- Robert Brauneis, *Parodies, Photocopies, Recusals, and Alternate Copyright Histories: The Two Deadlocked Supreme Court Fair Use Cases*, 68 Syracuse L. Rev. 7 (2018), at 20–30. *lawreview.syr.edu · SSRN No. 3013947*
- Jonathan Band & Tara Weinstein, *The Blackmun Papers: A Peek Behind the Scenes of a Quarter Century of Supreme Court Copyright Jurisprudence*, 28 Colum. J.L. & Arts 315 (2005), at 319–21.
- Primary documents (Blackmun conference notes and pre-argument memo; the Powell memo; the Rehnquist, White–Powell, and recusal-research letters) are transcribed and scanned in Brauneis's fair-use archive at robertbrauneis.net/fairuse/ww/, drawn from the Blackmun Papers (Library of Congress) and the Powell Papers (Washington & Lee).

Aftermath

Because the Supreme Court resolved nothing on the merits, the fight moved directly into the copyright-revision process already underway. The Copyright Act of 1976 codified fair use for the first time (§107) and enacted a specific library-reproduction privilege (§108), while expressly excluding "systematic reproduction" (§108(g))—the very phrase the publisher had pressed. The National Commission on New Technological Uses of Copyrighted Works (CONTU) then translated §108 into workable practice: the interlibrary-loan "rule of five" (a borrowing library's copying of the last five years of a periodical becomes a subscription substitute past five articles per year), and the market responded with the Copyright Clearance Center (1978) to collect per-article royalties—the licensing solution the Authors League and the publishers' briefs had asked the Court to force. In that sense both sides of this record got a version of what they argued for, but from the legislature rather than the Court.

Prepared as a guide to the documents collected in this Internet Archive item (Williams & Wilkins Co. v. United States, 420 U.S. 376 (1975), No. 73-1279). All quotations are drawn from the full text of the filings in this item; document numbers refer to the item's own sequence. Case-history and aftermath statements reflect the public record of the Copyright Act of 1976, §§107–108, and the 1978 CONTU Final Report.